

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 660 of 1998

KESHUBHAI BADHABHAI BATHWARA HARIJAN

Versus

STATE OF GUJARAT

Appearance:

MR KJ SHETHNA for Petitioners

MR KT DAVE, A.P.P. for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of Order: 21/03/98

C.A.V. ORDER

1. The petitioners against whom there is accusation for the offence under section 302 read with section 34 IPC in C.R. No. I 171/97 Bhavnagar Police Station, filed this criminal misc. application under section 439 of Cr. P. .C. for enlargement on bail.

2. In this case, challan has already been submitted against the petitioners and the case has been committed to the Sessions Court, Bhavnagar by the Magistrate wherein it is registered as Sessions Case No.5/98.

3. Heard learned counsel for the parties at length. Learned counsel for the petitioners submitted that the trial in this case may take a long time and the petitioners have been falsely implicated in this case and as such, they may be released on bail. Carrying this contention further, the learned counsel for the petitioners stated that earlier these petitioners were convicted for the offence under section 302 IPC and they remain in jail for about 7 - 1/2 years but ultimately they have been acquitted by this Court and this case against them is nothing but only an attempt to see that they continue in the jail.

4. Another contention has been made that the evidence which has come on record is not sufficient to connect the petitioners in this case.

5. On the other hand, the learned counsel for the State contended that the petitioners are accused of heinous offence they have committed murder of a person in

the court room. Looking to the seriousness of the offence and further fact that these persons have gone to the extent of murdering a person in the court room itself, they should not be enlarged on bail. It has next been contended that both these persons have been named in F.I.R. and it cannot be said that they have been falsely implicated in this case.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. At this stage where the trial has not been commenced so far it is not desirable for this Court to examine the matter as a trial court nor it is advisable to make observation on the merits of the matter otherwise it may prejudice the case of either of the parties. At this stage of considering the application for enlarging the petitioners on bail, the Court has to consider whether prima-facie there is a material to connect these persons to the offence of which they have been accused of. The petitioners have been named in the F.I.R. and second in the discovery panchnama it is recorded that the applicants have produced blood stained clothes and weapons. Not only this but the statements of eye witnesses have also been recorded. Having gone through the F.I.R., panchnama and the statements I am satisfied that prima facie there is material on the record to connect the petitioners in this case. From the order of the learned Sessions Judge I find that he was of the opinion that in case the applicants are released on bail there is likelihood of breach of peace. In support of this apprehension, the learned Sessions Judge has given out the reasons.

8. Criminal cases stated to be pending between the parties. Further apprehension has been shown by the learned Sessions Judge, that in case the applicants are released on bail it is quite probable that they may tamper with the evidence. Earlier application has been dismissed by the learned Sessions Judge after considering the police papers and while dealing with the second petition, he has observed that in his opinion no fresh circumstances have arisen.

9. So taking into consideration the totality of the facts of this case, I do not consider it to be a fit case where the petitioners should be enlarged on bail.

10. In the result, this criminal misc. application is dismissed.

(S.K. Keshote,J)